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ASSIGNED NAMES AND NUMBERS

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

VERISIGN, INC., a Delaware corporation,

Plaintiff,

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, a California corporation; DOES 1-50,

Defendants.

Case No. 04 CV 1292 AHM (CTx)

DEFENDANT INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS' OPPOSITION TO PLAINTIFF VERISIGN, INC.'S *EX PARTE* APPLICATION TO CONTINUE ICANN'S MOTION TO STRIKE TO ALLOW FOR DISCOVERY

INTRODUCTION

The *purpose* of California's anti-SLAPP statute is to afford a defendant with a means of disposing of claims that lack merit "quickly and inexpensively" and of requiring the plaintiff to pay the defendant's attorneys' fees and costs. VeriSign, Inc.'s ("VeriSign") *ex parte* application to continue defendant Internet Corporation for Assigned Names and Numbers' ("ICANN") Special Motion to Strike is an improper attempt to delay the disposal of VeriSign's meritless state law claims, an attempt that clearly is at odds with the purpose of the anti-SLAPP statute and the Ninth Circuit's interpretation of that law in federal court.

VeriSign's position that anti-SLAPP motions should be heard at the close of discovery would defeat the entire purpose of the statute and render its provisions meaningless. This is particularly true where, as here, the plaintiff's complaint is quite specific that the plaintiff is challenging protected activity, and where the letter that the plaintiff references *on its face* demonstrates that the anti-SLAPP statute applies. VeriSign's *ex parte* application should be denied.

STATEMENT OF FACTS

On September 15, 2003, VeriSign introduced a wildcard[1] into the .com zone of the Internet, as part of a new feature it referred to as "Site Finder." Compl., ¶ 33. On October 3, 2003, ICANN sent VeriSign a letter ("October 3 letter") stating that the introduction of the wildcard violated the agreement between VeriSign and ICANN pursuant to which VeriSign is entitled to operate the .com registry, that VeriSign must suspend the wildcard, that the letter was to be considered "a formal demand" to stop operating the wildcard, and that failure to suspend the wildcard

[1] When most users of the Internet type in an address that has not been registered in the registry, the users receive an "error" message or a "page cannot be displayed" message that states in effect that the Internet site does not exist. Compl., ¶ 34. If, instead, a registry operator wants to redirect the Internet user to an Internet page established by the registry (with content supplied by the registry), the registry can employ a "wildcard." Via a wildcard, the registry operator can cause an Internet user who types in a domain in the TLD that is not specifically assigned to be redirected to an Internet page established by the registry operator.

would cause ICANN "to seek promptly to enforce VeriSign's contractual obligations." *See* RJN Ex. F.[2] In response to this letter, which VeriSign refers to as the "Suspension Ultimatum," VeriSign removed the wildcard. Compl., ¶¶ 32-34, 94, 101, 107. Obviously, VeriSign viewed ICANN's threat to litigate as a legitimate one.

VeriSign filed its Complaint on February 26, 2004. The Complaint contains seven claims. VeriSign's second, third, and fourth claims for relief are all based entirely on the dispute between ICANN and VeriSign arising from VeriSign's insertion of a "wildcard" in the .com zone. Compl., ¶¶ 92-110. VeriSign alleges that ICANN's October 3 letter breached the Registry Agreement (claims 2 and 3) and constituted unlawful interference with contractual relations (claim 4). Compl., ¶¶ 94, 101, 107-109. VeriSign's fifth and sixth claims for relief for breach of contract are based partly on the October 3 letter, and also on statements by ICANN in other contexts concerning VeriSign's performance under the contract. *See*, *e.g.*, Compl., ¶¶ 37, 44, 45, 52, 53, 67.

On April 5, 2004, ICANN filed a motion to dismiss VeriSign's first six claims, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. A hearing on that motion is scheduled for May 17, 2004. ICANN filed its Special Motion to Strike on April 20, 2004.[3] The Special Motion to Strike is directed to

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[2] ICANN's RJN (Request for Judicial Notice) was filed in conjunction with ICANN's Motion to Dismiss on April 5, 2004. For the Court's convenience, the letter also is attached to the concurrently-filed Declaration of Courtney M. Schaberg ("Schaberg Decl.") as Exhibit 1.

[3] VeriSign's *Ex Parte* Application ("Application") states that "ICANN advised VeriSign on April 20, 2004 that ICANN intended to file its special motion to strike later that day." Application, 4:27-28, n.4. To be clear, ICANN informed VeriSign that it would be filing a Special Motion to Strike long before April 20, 2004, and the parties had agreed that ICANN would file its Special Motion to Strike on April 22, 2004. Hutt Decl., ¶ 5. ICANN served the motion on April 12, 2004, in order to give VeriSign more time to prepare its response. VeriSign's counsel called ICANN's counsel on April 19, 2004, and stated that VeriSign intended to file its Application directed to ICANN's Special Motion to Strike the following day. Hutt Decl., ¶ 11. For this reason, ICANN filed its Special Motion to Strike on April 20, 2004.

VeriSign's second through sixth claims, and the hearing on this motion is also scheduled for May 17, 2004.

LEGAL STANDARD

Ex parte relief constitutes emergency relief and will not be granted unless the declaration accompanying the application demonstrates good cause for relief. *Mission Power Eng. Co. v. Continental Casualty Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995). *Ex parte* applications should only be granted when the evidence shows 1) that the moving party's cause will be irreparably prejudiced if the underlying motion is heard according to regular noticed motion procedures; and 2) the moving party is without fault in creating the crisis that requires *ex parte* relief." *Id.*; *see also In re Intermagnetics America, Inc*., 101 B.R. 191, 193 (C.D. Cal. 1989). This Court's standing Scheduling and Case Management Order "strongly discourages *ex parte* applications." Scheduling and Case Management Order, at 8:22-25 (cautioning parties to "[t]hink twice!" before filing an *ex parte* application and citing *Mission Power Eng. Co.*, 883 F. Supp. 488 (C.D. Cal. 1995)).

ARGUMENT

I. ICANN'S ANTI-SLAPP MOTION IS TIMELY, NOT PREMATURE.

California's anti-SLAPP statute contains procedural requirements that a Special Motion to Strike must be filed and heard at the beginning of an action. Application, 2:9-11; 6:5-11. VeriSign contends that these procedural requirements do not apply in federal court and therefore ICANN's motion is "premature." VeriSign is wrong.

California's anti-SLAPP statute contains the following provision:

> (f) The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion shall be noticed for hearing not more than 30 days after service unless the docket conditions of the court require a later hearing.

Cal. Civ. Proc. Code § 425.16(f).

VeriSign relies on *Metabolife Int'l., Inc. v. Wornick*, 264 F.3d 832, 846 (9th Cir. 2001) and *Rogers v. Home Shopping Network, Inc.*, 57 F. Supp. 2d 973, 982 (C.D. Cal. 1999) for the proposition that ICANN was not required to file its Special Motion to Strike within 60 days of service of the Complaint and set it for hearing within 30 days thereafter. Application, 2:11-16. But, the *Rogers* court, which VeriSign acknowledges the *Metabolife* court cited with approval, specifically states that there is *no conflict* between the 30- and 60-day requirements of the statute and the Federal Rules. *Rogers*, 57 F. Supp. 2d at 982, n.3 ("subsection (f) effects no substantive change from the usual procedures pursuant to the Federal Rules.")

Indeed, had ICANN waited more than 60 days to file its Special Motion to Strike, VeriSign undoubtedly would be arguing that ICANN's motion was late and effectively barred. VeriSign cites no authority to suggest that ICANN would have been permitted, as a matter of right, to file its Special Motion to Strike at a later stage in the proceeding. Rather, in all of the federal cases that VeriSign cites, there is no indication that the Special Motion to Strike was not filed within 60 days of service of the Complaint. *See Globetrotter Software, Inc. v. Elan Computer Group, Inc.*, 63 F. Supp. 2d, 1127, 1128 (N.D. Cal. 1999) (filed within 60 days); *Shropshire v. Fred Rappaport Co.*, 294 F. Supp. 2d 1085, 1092 (N.D. Cal. 2003) (filed within 60 days); *eCash Technologies, Inc. v. Guagliardo*, 210 F. Supp. 2d 1138, 1141-43 (C.D. Cal. 2001) (filed within 60 days with each amendment); *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1102 (9th Cir. 2003) (filed with Rule 12(b)(6) motion); *Batzel v. Smith*, 333 F.3d 1018, 1023 (9th Cir. 2003) (filed with Rule 12(b)(2) motion); *Metabolife*, 264 F.3d 832 (no indication that motion was not filed within 60 days from the filing of the complaint); and *Rogers*, 57 F. Supp. 2d 973 (same). And, in all of the other anti-SLAPP cases VeriSign has cited except *Rogers* (discussed further below), there is no indication that briefing and the hearing did not proceed promptly. *See Gallimore v. State Farm Fire & Casualty Ins. Co.*, 102 Cal. App. 4th 1388, 1391-94 (2002); *Kajima Engineering & Constr.,*

Inc. v. City of Los Angeles, 95 Cal. App. 4th 921, 925 (2002); *Beach v. Harco Nat'l Ins. Co.*, 110 Cal. App. 4th 82, 89 (2003); *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman*, 47 Cal. App. 4th 777, 780-81 (1996); and *Briggs v. Eden Council for Hope & Opportunity*, 19 Cal. 4th 1106, 1111 (1999).

II. ICANN'S ANTI-SLAPP MOTION SHOULD BE BRIEFED AND HEARD SIMULTANEOUSLY WITH ITS MOTION TO DISMISS.

VeriSign argues that ICANN's anti-SLAPP motion should be continued to allow VeriSign to conduct discovery. Application, 6:13-7:11. This is simply not the law. Rather, the most recent Ninth Circuit authority has recognized that discovery is *not* appropriate prior to a Court's ruling on an anti-SLAPP motion to strike. *See Batzel*, 333 F.3d at 1024-25; *Vess*, 317 F.3d at 1106-1110; *see also Global Telemedia Int'l, Inc. v. Doe*, 132 F. Supp. 2d 1261 (C.D. Cal 2001). Moreover, while the earlier Ninth Circuit case VeriSign cites directed the lower court to allow limited "essential" discovery before ruling on the anti-SLAPP motion, that case arose under circumstances not present here. *See Metabolife*, 264 F.3d at 846.

A. The Filing of a Special Motion to Strike Stays Discovery Pending the Hearing on the Motion.

Subsection (g) of California's anti-SLAPP statute provides:

> All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision.

Cal. Civ. Proc. Code § 425.16(g). Accordingly, the Ninth Circuit has recognized that "[i]f the defendant files an anti-SLAPP motion to strike, all discovery proceedings are stayed." *See Batzel*, 333 F.3d at 1024 (citing Cal. Civ. Proc. Code § 425.16(g).). "If an anti-SLAPP motion to strike is granted, the suit is dismissed and the prevailing defendant is entitled to recover his or her attorney's fees and

costs. If the motion to strike is denied, the anti-SLAPP statute does not apply and the parties proceed with the litigation." *Batzel*, 333 F.3d at 1024-25 (if the plaintiff's case survives, "the anti-SLAPP statute no longer applies and the parties proceed to litigate the merits of the action.").

Numerous courts in the Ninth Circuit have heard motions to dismiss and anti-SLAPP motions at the same time. For example, in *Vess*, the Ninth Circuit affirmed the district court's decision to grant two of the three defendants' anti-SLAPP motions. The parties submitted briefing on their anti-SLAPP motions *simultaneously* with their Rule 9(b) and 12(b)(6) motions to dismiss. *Vess*, 317 F.3d at 1102. The plaintiff amended its complaint, the defendants renewed their motions, and the district court dismissed the plaintiff's complaint without prejudice as to all three defendants. *Id*. When the plaintiff failed to amend its complaint further, the district court granted the motions to dismiss and the motions to strike. *Id*.

The Ninth Circuit approved of the district court's procedures and, because it affirmed the motions to dismiss as to two defendants and reversed the motion to dismiss as to the third, it also affirmed the anti-SLAPP motion rulings as to the two defendants and reversed as to the third. *Id*. at 1106, 1108, 1110. Thus, the *Vess* case does *not* stand for the proposition (argued by VeriSign) that the Court should not address an anti-SLAPP motion concurrent with a Rule 12 motion to dismiss; rather, it stands for the proposition that the motions should be briefed and heard at the same time, and an anti-SLAPP motion may be granted at the same time that a motion to dismiss is granted with prejudice.

Likewise, in *eCash Technologies, Inc.*, 210 F. Supp. 2d at 1154, the plaintiff filed a motion to dismiss as well as an anti-SLAPP special motion to strike the state law counterclaims filed against it. Judge Collins granted the plaintiff's motion to dismiss and, *in the same opinion*, found that defendants' state law counterclaims were subject to the special motion to strike and plaintiff was entitled to attorneys'

fees and costs. *Id.* at 1153-55. Judge Collins also noted that a special motion to strike "is akin to a Rule 12(b)(6) motion to dismiss." *Id*. at 1144.

As in *Vess* and *eCash*, ICANN has filed a motion to dismiss and a motion to strike to be heard at the same time. And, as in *Vess* and *eCash*, the Court should allow briefing on both motions to proceed simultaneously and should hear argument on the two motions at the same time. Following this procedure will allow the Court to rule on ICANN's motion to dismiss and, if appropriate, simultaneously dismiss VeriSign's claims with prejudice, grant the anti-SLAPP motion, and award ICANN its attorneys' fees.[4]

B. Ninth Circuit Precedent Does Not Support VeriSign's *Ex Parte* Application for a Continuance.

VeriSign argues that, contrary to the *Batzel* court's clear statement of the applicable anti-SLAPP procedures, other cases stand for the proposition that VeriSign is entitled to discovery before the anti-SLAPP motion is decided. *See* Application, 7:12-11:4. However, the cases VeriSign cites (*Metabolife*, *Rogers*, and *Shropshire*) do *not* support that argument. At most, these cases stand for the proposition that, where an anti-SLAPP motion is directed to the sufficiency of plaintiff's proof, as opposed to the sufficiency of plaintiff's pleadings, limited discovery essential to the plaintiff's opposition may be permitted.

In *Metabolife* (which was decided before the Ninth Circuit's decisions applying the anti-SLAPP statute in *Batzel* and *Vess*[5]), the Ninth Circuit found that

[4] VeriSign argues repeatedly: "ICANN's motion to dismiss addresses all of the claims at issue in its motion to strike." Application, 1:14-17; 3:20-21. Therefore, considerations of judicial economy also favor hearing the two motions at the same time.

[5] Directly contrary to VeriSign's argument, the *Vess* court did *not* note the *Metabolife* decision with approval. Application, 6:25-7:28 n.5. Rather, the *Vess* court cited the *Metabolife* case as a "*But see*" after it quoted with approval the following holding from *United States ex rel. Newsham v. Lockheed Missiles & Space Co.*, 190 F.3d 963, 970-73 (9th Cir. 1999): "holding that there is no direct conflict between the Federal Rules and §§ 425.16(b) and (c), *and that adopting California procedural rules serves the purposes of the Erie doctrine*." *Vess*, 317 F.3d at 1109 (emphasis added).

the "*discovery-limiting aspects* of section 425.16(f) and (g) did not apply in federal court." *Metabolife*, 264 F.3d at 846 (emphasis added). However, the *Metabolife* court explicitly based its ruling on the findings of the court in *Rogers*. In *Rogers*, the court approved of ruling on anti-SLAPP motions *prior* to discovery where, as here, the targeted claims could not survive a Rule 12 motion to dismiss:

> If a defendant makes a special motion to strike based on alleged deficiencies in the plaintiff's complaint, the motion must be treated in the same manner as a motion under Rule 12(b)(6) except that the attorney's fee provision of § 425.16(c) applies. If a defendant makes a special motion to strike based on the plaintiff's alleged failure of proof, the motion must be treated in the same manner as a motion under Rule 56 except that again the attorney's fees provision of § 425.16(c) applies.

Rogers, 57 F. Supp. 2d at 983. The *Rogers* court went on to explain that, where plaintiff's claims survive a motion to dismiss, the Special Motion to Strike can be used to test whether plaintiff could support its claims with adequate evidence and only in these cases is narrow discovery limited to information essential to the opposition appropriate.[6] *Id.*, 57 F. Supp. 2d at 983-84.

Relying on and distinguishing *Rogers*, a court in this District denied plaintiffs' request that the court "stay the decision" on defendants' anti-SLAPP motions "to allow Plaintiffs limited discovery." In *Global Telemedia Int'l, Inc. v. Doe*, 132 F. Supp. 2d 1261 (C.D. Cal. 2001), defendants made Internet postings in a chat room critical of the plaintiffs' company. Based on defendants' statements, plaintiffs filed an action for interference with contractual relations and other torts. In responding to defendants' anti-SLAPP motion, plaintiffs argued that if the Court was inclined to grant the defendants' anti-SLAPP motion, it should first permit plaintiffs limited discovery as to one of the defendant's (King's) "general experience

[6] ICANN's Special Motion to Strike tests both legal theories and the sufficiency of VeriSign's proof. Therefore, if the Court is inclined to follow *Rogers*, then ICANN's motion should be treated first as equivalent to a Rule 12 motion. To the extent any of VeriSign's claims survive the test of VeriSign's legal theories, VeriSign should be "put to its proof" to see if its evidence can withstand the motion.

in trading stocks, his over-all knowledge and sophistication regarding valuation of lower-dollar stocks such as [plaintiffs'], including the effect of 'consumer' comments."[7] *Id.* at 1271. The Court denied the request because discovery was unnecessary to the resolution of the anti-SLAPP motion:

> Here, Plaintiffs' request for discovery does not fall within the scope of *Rogers*. King's experience in trading is irrelevant to the questions raised in this motion, including issues of damage and whether the postings were fact or opinion. Having made the legal determination that the statements must be factual to be actionable, and having further found that the postings are opinions rather than actionable facts, the Court does not require further evidence to evaluate Plaintiffs' claims.

Id. at 1271.

As in *Global Telemedia*, no further evidence is necessary to the Court's evaluation of VeriSign's claims. The Court has before it VeriSign's *own allegations* that the October 3 letter was sent in anticipation of litigation. These allegations render moot any discovery that VeriSign might seek regarding whether the anti-SLAPP motion applies to the October 3 letter. In addition, the Court may take judicial notice of the October 3 letter, which demonstrates on its face that ICANN intended to file a lawsuit unless VeriSign removed the wildcard, *which it did* in response to the letter. *See* Schaberg Decl., Ex. 1.

Unlike the Special Motion to Strike in *Global Telemedia*, VeriSign argues that "ICANN's Motion raises issues of fact as to which discovery is essential prior to any hearing on the Motion" because: 1) VeriSign needs discovery before the Court can determine whether the anti-SLAPP statute applies to the October 3 letter (Application, 7:12-11:2); and 2) VeriSign needs discovery right now that is exclusively within ICANN's control to carry its burden on the anti-SLAPP motion (Application, 11:5-12:20).

[7] Like the plaintiff in *Global Telemedia*, VeriSign could have and should have raised these arguments in its opposition to the anti-SLAPP motion. There is no emergency here. Instead, VeriSign is wasting the resources of this Court and ICANN, a non-profit corporation, by asking the Court to examine aspects of ICANN's anti-SLAPP motion twice.

The notion that VeriSign needs discovery before the Court can determine whether ICANN has made a "prima facie" showing that the anti-SLAPP statute applies to the October 3 letter is preposterous. As discussed above, VeriSign's Complaint alleges that the letter constituted a threat that "ICANN would initiate legal proceedings against VeriSign," and "forced" VeriSign to suspend its wildcard. Compl., ¶ 37. VeriSign even calls the October 3 letter the "Suspension Ultimatum." *See e.g.*, *id*. at ¶¶ 37, 38, 70, 71, 94, 101, 107. Having repeatedly alleged in its Complaint that the October 3 letter forced VeriSign to remove the wildcard in order to avoid litigation, VeriSign cannot now argue that the letter was not sent in anticipation of litigation or that discovery is necessary to assess "defendant's state of mind." *See*, *e.g.*, *eCash Technologies, Inc.*, 210 F. Supp. 2d at 1152 (discovery not necessary to determine that letter was, on its face, privileged under CCP section 47(b)); *Equilon Enterprises, LLC v. Consumer Cause, Inc.*, 29 Cal. 4th 53, 518-19 (2002) (discovery not necessary to determine that anti-SLAPP motion applied to "notices of intent to sue"); *Dove Audio*, 47 Cal. App. 4th at 783 (discovery not necessary to determination that CCP section 47(b) and anti-SLAPP statute applied to letter which, on its face, was a communication in anticipation of litigation.). Any review of the October 3 letter likewise would leave no doubt that this letter was a bona fide threat to litigate. *See* Schaberg Decl, Ex. 1.

VeriSign's reliance on *Shropshire* is misplaced. First, in *Shropshire*, the court was evaluating the anti-SLAPP motion -- not an *ex parte* application to continue the hearing date on the motion. *Shropshire*, 294 F. Supp. 2d at 1099. Second, unlike the claims in *Shropshire,* VeriSign's Complaint (especially the second through fourth claims) unambiguously bases its claims on the October 3 letter. And third, VeriSign's Complaint and the October 3 letter demonstrate that the letter was sent in anticipation of legal proceedings and is thus protected activity. *See Shropshire*, 294 F. Supp. 2d at 1099-1100 (complaint unclear as to whether

letter to third party was sent in anticipation of litigation).[8] Indeed, the facts of this case are even more persuasive than those in *eCash*, *Equilon*, and *Dove Audio*, where the application of the anti-SLAPP statute to the communication was clear from the face of the document; here, VeriSign has *conceded* that ICANN sent its letter threatening legal proceedings and that VeriSign took the letter seriously. Compl., ¶ 37.

VeriSign then argues that it needs discovery that is within ICANN's control to carry its burden on the anti-SLAPP motion. Application, 11:3-18. This is wrong. As to VeriSign's second, third, and fourth claims, no additional discovery is necessary because if, following briefing on ICANN's anti-SLAPP motion and its motion to dismiss, the Court concludes that the anti-SLAPP motion applies to the October 3 letter and that VeriSign's second, third, and fourth claims fail to state a claim, then the Court will grant ICANN's anti-SLAPP motion. And if, after briefing on the anti-SLAPP motion and ICANN's motion to dismiss, the Court concludes that ICANN's October 3 letter and ICANN's other statements demonstrate a prima facie case that the statute applies and VeriSign's fifth and sixth statements fail to state a claim as a matter of law, then VeriSign's fifth and sixth claims will be barred as well.

Finally, VeriSign's argument that "several federal courts have found it most appropriate to continue anti-SLAPP motions until the close of discovery" is entirely unsupported. Application, 2:19-22; 3:25-28; 7:3-5. VeriSign again cites *Metabolife*, *Rogers*, and *Shropshire*. But these cases do *not* support that proposition. To the extent discovery on anti-SLAPP Special Motion to Strike has

[8] VeriSign significantly overreaches when it suggests that, to defend against the anti-SLAPP motion, VeriSign might need discovery of "ICANN's assessment of the legitimacy of its potential claims." Application, 10:21-11:1. That information is obviously privileged; even the *Shropshire* and *Aronson* cases, to which VeriSign cites, confirm that the only potential factual issue is whether defendant actually intended to file suit. And there is no factual issue here, given VeriSign's allegations and the October 3 letter. *Shropshire*, 294 F. Supp. 2d at 1099; *Aronson v. Kinsella*, 58 Cal. App. 4th 254, 266-69 (1997).

been permitted at all under Ninth Circuit precedent, only discovery that is "essential to [plaintiff's] opposition to the Motion to Strike" is permitted. *Metabolife,* 264 F.3d at 846; *Rogers*, 57 F. Supp. 2d at 986 (only "identified specific discovery" essential to opposition to the special motion); *Shropshire,* 294 F. Supp. 2d at 1100 (only limited discovery essential to plaintiff's defense).

III. IN THE ALTERNATIVE, THE COURT SHOULD REQUIRE BOTH MOTIONS TO BE BRIEFED BUT SHOULD RESOLVE ICANN'S MOTION TO DISMISS BEFORE RULING ON ICANN'S SPECIAL MOTION TO STRIKE.

Even if the Court is inclined to continue for a limited time the hearing on ICANN's Special Motion to Strike, briefing should nonetheless be completed now and a hearing on the Special Motion to Strike should be held as soon as VeriSign's Complaint is finalized. By requiring the parties to complete their briefing on the anti-SLAPP motion, the Court will be in a position promptly to evaluate the anti-SLAPP motion as soon as it determines the legal sufficiency of the five overlapping claims ICANN is also attacking by its motion to dismiss. The Ninth Circuit favors a resolution of the anti-SLAPP motion as soon as practicable following the finalization of VeriSign's Complaint (*Vess*, 317 F.3d at 1102) and, in all events, in advance of discovery or other litigation of the merits. *See Batzel*, 333 F.3d at 1024-25.

CONCLUSION

For the foregoing reasons, ICANN requests that the Court deny VeriSign's *ex parte* application in its entirety and conduct the hearing on the motion to strike on May 17, 2004.

Dated: April 21, 2004

JONES DAY

By: _____
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

STATUTES